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FILED

June 11, 2003

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

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Deputy Attorney General Tel: (973) 648-7455

> STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY DIVISION OF CONSUMER AFFAIRS. STATE BOARD OF MEDICAL EXAMINERS DOCKET NO.

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF

Administrative Action

ERNEST HITON PHIPPS, JR., M.D. LICENSE NO. MA 71208

CONSENT ORDER GRANTING VOLUNTARY SURRENDER OF LICENSURE

TO PRACTICE MEDICINE AND SURGERY IN TEE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Medical Examiners ["Board") upon receipt of information that on or about January 3, 2003, Ernest Hiton Phipps, Jr., M.D. ("Respondent") was arrested and charged with Criminal Trespass-Peeping Tom and Resisting Arrest by Physical Force. Respondent was subsequently indicted in Monmouth County for Criminal Trespass-Peeping Tom, a fourth degree crime, for entering upon the property Of another and peering through a sliding glass door into the bedroom of a 14-year old female resident, and observing both the 14-year old female and her 15-year old female visitor in a state of undress. Respondent was also indicted for Resisting Arrest by Physical Force, a third degree crime, for engaging in resistive conduct which creared a substantial risk of harm to the arresting police officers.



On June 5, 2003 an Order to Show Cause and verified Complaint was filed with the State Board of Medical Examiners, returnable on June 11, 2003 at 10:00 a.m.

Respondent seeks leave to voluntarily surrender his license to practice medicine end surgery in the State of New Jersey without prejudice and in accordance with the terms of this Order. The Board finding the within disposition to be adequately protective of the public health, safety, and welfare,

ORDERED TEAT:

- 1. Respondent, Ernest Hiton Phipps, Jr., M.D., is hereby granted leave and shall immediately surrender his license to practice medicine and surgery In the State of New Jersey pending the disposition of the criminal charges.
- 2. Respondent shall contact the Physician's Health Program ("PHP") and submit to psychological, psychiatric, and/or substance abuse evaluation under their supervision. Respondent shall comply with the treatment recommendations, if any, of the PHP and hereby consents to the PHP's receipt of relevant documents from the Attorney General's office. Respondent waives all applicable privileges with regard to the release of the PHP reports and underlying evaluations to the Board and the Attorney General's office.
- 3. Respondent shall return his original New jersey license and current blennial registration to the New Jersey State Board of Medical

Examiners, Post Office Box 153, Trenton, New Jersey 08625-0183, upon his receipt of a filed copy of this Order.

- Respondent shall comply with the attached directives for physicians whose surrender of licensure has been accepted by the Board, which are incorporated herein by reference.
- Respondent shall return his original CDS registration to the New Jersey State Board of Medical Examiners, Past Office Box 183, Trenton, New Jersey, 08625-0183, upon receipt of a filed copy of this Order.
 - 6. Respondent shall immediately advise the PEA of this Order.
- The parties hereby stipulate that entry of this Order is 7. without prejudice to further action by this Board or other law enforcement entitles resulting fram Respondent's canduct prior to the entry of this Order, and without prejudice to the further prosecution of the allegations contained in the Verified Administrative Complaint filed wit3 the Board of Medical Examiners an June 5, 2003 and/or the Board's ongoing investigation into Respondent's medical practice,

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

I have read and understand the within Consent Order and agree to be bound by its terms. I understand that this Order has serious legal consequences and have decided Eo enter into this agreement with the Board without counsel. Consent is hereby given to the Board to enter this Order.

Ernest Hiton Phipps, Jr., M.D.

Date

DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE HAS BEEN ACCEPTED

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee **shall** promptly **forward** to the Board office at **Post** Office Box **183**, **140** East Front **Street**, **2nd** floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration **and**, if applicable, the original CPS registration, In addition, if the **licensee** holds a Drug Enforcement **Agency** (DEA) registration, he or **she shall** promptly advise the **DEA** of the licensure action. (With respect to suspensions **of** a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously **surrendered** to the Board. In addition, at the conclusion of **the** term, the licensee **should** contact the DEA **to advise** of the resumption of practice **and** to ascertain **the** impact of that change upon his/her **DEA** registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (I) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one yeas, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who **is** a shareholder in a professional service corporation organized to engage in the professional practice, **whose** license *is* revoked, surrendered or suspended for a term of one (1) year or more **shall be** deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who **is** a **member** of a **limited** liability company **organized** pursuant to N.J.S.A. 42:1-44, **shall** divest him/herself of all financial interest. Such divestiture shall occur within 90 **days** following *the* **the** entry of the Order rendering the licensee disqualified to participate in the applicable *form* of ownership. Upon divestiture, a **licensee shall forward** to the Board a **copy** of documentation forwarded to ?heSecretary of State, Commercial Reporting Division, demonstrating that the interest has **been** terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must **be** dissolved within 90 **days** of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month periodfollowing the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

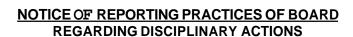
- (a) Monitoring of practice conditions **may include**, but **is** not limitedto, inspection of **the professional**premises **and equipment**, **and Inspection and** copying **of** patient **records** (confidentiality **of** patient identity **shall be** protected **by** the Board) to verify compliance with the Board Order and accepted standards of practice.
- (b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number':
List the Name and Address of any and all Health Care Facilities with which you are affiliated:
List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:
Provide the names and addresses of every person with whom you are associated in you professionat practice: (You may attach a btank sheet of stationery bearing this information

Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.



Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR **Subtitle A 60.8**, **the Board is obligated to** report to the National Practitioners **Data Bank** any action relating to a physician which Is based on reasons relating to professional **competence** or **professional conduct:**

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places an probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to **report to** the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a **license(and the length** of any such suspension), reprimand, censure or probation or any other **loss of** license or the right to apply for, or renew, a license of the provider, **supplier**, or practitioner, whether by operation of taw, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by **such** Federal or State agency that is publicly **available** information.

Pursuant to N.J.S.A.45:9-19.13, if the **Board refuses** to issue, **suspends**, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensedhealth care facility and health maintenanceorganization with which a licensee is affiliated **and** every other board licensee in this state with whom **he** or she is directly associated in private medical practice.

In accordance with **an** agreement with **the** Federation of State Medical Boards of the United States, a list of **all** disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will **appear** on the public **agenda** for **the** next monthly Board meeting and is forwarded to those members of the public requesting a **copy**. In addition, **the same** summary will **appear** in the minutes of that Board meeting, **which are also** made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which Is made available to those members of the **public** requesting a **copy**.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief **description** of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the **summaries** of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from **disclosing any public** document.